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Commonwealth of Virginia

**RESPONSE TO PETITION FOR RULEMAKING**

Check one: ☒ Initial Agency Notice   ☐ Agency Decision

**Regulatory Coordinator:** Cindy M. Berndt

**Telephone:** (804) 698-4378

**E-mail:** cmberndt@deq.virginia.gov

**Agency Name:** Department of Environmental Quality

**Chapters affected:**

VAC No. <i>(e.g., 4 VAC 20-490):</i>	Chapter Name <i>(e.g., Regulations Pertaining to Sharks):</i>
9 VAC 25-720	Water Quality Management Planning Regulation (WQMP)

**Statutory Authority:** State mandate in the Code of Virginia, §62.1-44.15, is the source of legal authority identified to promulgate these amendments. The promulgating entity is the State Water Control Board.

**Name of petitioner:** Steven J. Dugent, Tyson Foods, Inc., Complex Environmental Manager

**Nature of petitioner's request:** Amend the total phosphorus (TP) waste load allocation established in 9 VAC 25-720 (WQMP Regulation) for the Tysons-Glen Allen plant. In Nov. 2005, this facility's discharge permit was reissued with a TP limit of 409 lbs/yr, based on a Total Maximum Daily Load (TMDL) study. The TMDL allocation was determined in relation to the sustainable phosphorus levels in the nearby receiving stream that would be protective of water quality. During this time, the TP waste load allocation under 9 VAC 25-720 was being finalized, with an underlying assumption that the TMDL requirement would also serve as the WQMP allocation. In other words, the WQMP allocation associated with the total James basin nutrient loads would not be more stringent than what was necessary to protect local water quality. It is now apparent that the WQMP allocation (TP = 326 lbs/yr) used a differing assumption for the design flow figure, which is affected by the fact that the facility is operated fewer than 7 days per week, but the allocation is expressed in pounds per year. The design flow and TP concentration bases for the TMDL and WQMP waste load allocations must be reviewed and made consistent, with the result being an identical figure of 409 lbs/yr for both discharge limitations.

**INITIAL AGENCY NOTICE**

**Agency's plan for disposition of the request:** The Department is public noticing receipt of the petition and seeking public comment on the petition. Upon close of the public comment period, comments received will be reviewed and a decision made on initiating a rulemaking or placing the petition on the Board's next meeting agenda for their consideration.

**Comments may be submitted until** August 14, 2006

**AGENCY DECISION**

☐ **Request Granted**

☐ **Request Denied**

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**Statement of reasons for decision:**

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**Agency Contact for Further Information:**

**Name:** John M. Kennedy

**Title:** DEQ-Chesapeake Bay Program Manager

**Address:** P.O. Box 10009, Richmond, VA 23240-0009

**Telephone:** (804) 698-4312      **Fax:** (804) 698-4116

**Toll Free:** 1-800-592-5482

**E-mail:** jmkennedy@deq.virginia.gov

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**Date Submitted:** July 5, 2006

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